

DIVISION II

CA 06-717

KENNY E. GOODWIN

February 28, 2007

APPELLANT

V.

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT
[NO. CV04-5916]

UNIFUND CCR, ASSIGNEE OF
PROVIDIAN NATIONAL BANK

HONORABLE WILLARD PROCTOR,
JR., JUDGE

APPELLEE

AFFIRMED

SARAH J. HEFFLEY, Judge

Kenny E. Goodwin appeals from an order granting summary judgment to appellee Unifund CCR. Without benefit of counsel, Goodwin argues on appeal that the trial court erred by entering judgment without giving him his day in court. We affirm because there were no material facts that remained in dispute.

On June 1, 2004, Unifund CCR, as assignee of Providian National Bank, filed suit against Goodwin to collect a credit-card debt. An affidavit of account was filed in conjunction with the complaint showing a principal indebtedness of \$4,337.52, plus accrued interest in the amount of \$763.43 as of April 13, 2004. The day after he was served with process, Goodwin filed a handwritten response to the complaint conceding he was partially responsible for the debt, but contesting the amount of the debt claimed by appellee. Although appellee moved for a default judgment, the trial court denied that motion, accepting Goodwin's handwritten response as a proper answer.

On December 22, 2005, appellee propounded requests for admission asking

Goodwin to admit or deny that he received goods or services in the amount claimed, that the amount charged for the goods and services was reasonable, and that the amount claimed in the complaint was correct. Goodwin did not respond or file any objection to the requests for admission.

On March 17, 2006, appellee filed a motion for summary judgment. Appellee contended that the time had expired for Goodwin to respond to the requests for admission and that his failure to answer resulted in his admitting liability for the amount it claimed was due and owing. Arguing that there were no outstanding issues of material fact, appellee maintained it was entitled to judgment as a matter of law. The trial court agreed, and on April 7, 2006, the trial court granted appellee's motion for summary judgment. This appeal followed.

As his argument on appeal, appellant contends that he disputed the amount of the credit-card charges and that he was deprived of an opportunity to present his side of the case.¹ We find no error in the trial court's decision.

Summary judgment should only be granted when it is clear that there are no genuine issues of material fact to be litigated, and the party is entitled to judgment as a matter of law. *Southeastern Distributing Co. v. Miller Brewing Co.*, 366 Ark. 560, ___ S.W.3d ___ (2006). The moving party is entitled to summary judgment if the pleadings, depositions, answers to interrogatories and admissions on file, together with affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *Pilcher v. Suttle Equipment Co.*, 365 Ark. 1, ___ S.W.3d ___ (2006). On appellate review, we view the evidence in the light most favorable to the non-moving party, and we determine if summary judgment was appropriate based on whether the evidence presented by the moving party leaves a material fact unanswered. *Id.*

¹ Appellee argues that Goodwin's brief was not timely filed in this court. Our docket, however, shows that Goodwin was granted a seven-day clerk extension, as permitted by Ark. R. Sup. Ct. 4-4(f)(1). Goodwin's brief was filed on time.

Rule 36 of the Arkansas Rules of Civil Procedure provides in part:

(a) *Request for Admission.* A party may serve upon any other party a written request for the admission, for the purpose of the pending action, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or the application of law to fact, including the genuineness of any documents related to the request. ... Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney.

In interpreting Rule 36, our courts have consistently held that when a party fails to timely answer requests for admission, or otherwise fails to object to them, the requested matters are deemed admitted. *Norrell v. Giles*, 343 Ark. 505, 36 S.W.3d 342 (2001); *see also, e.g., Womack v. Horton*, 283 Ark. 227, 674 S.W.2d 935 (1984); *Gibson v. Gibson*, 87 Ark. App. 62, 185 S.W.3d 122 (2004). As applied here, Goodwin admitted liability for the debt in the amount claimed by appellee by his failure to respond to the requests for admission. With liability for the amount that was owed established, there remained no material facts in dispute. Therefore, the trial court's grant of summary judgment was proper. We affirm.

Affirmed.

VAUGHT and MILLER, JJ., agree.